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From:

Sent: 01-07-09 6:53 PM

To:

Cc:

Subject: Installment Sale Under 453(b)

Hi

Based on the generic description of transactions in your email, it appears that the pledge rule of section 453A(d) would apply if a taxpayer pledged Old Notes as collateral for a borrowing, i.e., the New Notes, unless the installment sale was a sale of personal use property (within the meaning of section 1275(b)(3) or a sale of property used or produced in the trade or business of farming (within the meaning of section 2032A(e)(5).

The reference to the article by Robert Wood causes me to question whether the transactions may have been a little different. In addition to the payment of \$ in to your taxpayer (the seller), did the purchaser make a payment of \$ to the institutional purchaser in return for the institutional purchaser assuming the purchaser's obligation to the seller? This scenario is more typical of the structure that Robert Wood advocates. He maintains that the purchaser's payment to the institutional purchaser in return for the institutional purchaser assuming responsibility for the purchaser's payments to the seller has no tax consequences to the seller or the purchaser. In such circumstances, the original purchaser also retains liability on the note to the seller. To my knowledge we have not issued any favorable rulings sanctioning such treatment. We have had a number of requests for private letter rulings in which we took the position that the circumstances would be viewed as the seller's receipt of the obligation of the third party, i.e., the institutional purchaser in your case, rather than the obligation of the purchaser. Section 15A.453-1(b)(3)(i) that the term "payment" does not include the receipt of evidences of indebtedness of the person acquiring the property ("installment obligation"). Consequently, the term "payment" does include the receipt of an obligation of a party other than the purchaser. Accordingly, the seller would be taxable on the face amount or fair market value (depending on whether the seller used the accrual or cash method of accounting, respectively) of the third party obligation in the year in which the third party assumed the purchaser's obligation to the seller. In such transactions, the seller is generally aware that the third party was going to assume the purchaser's obligation to the seller. In some cases, the purchaser, seller, and third party were all party to the negotiations concerning the structure of the sale. Although the purchaser remains liable to the seller, he is not going to make payments to the seller when he has already paid the third party an amount sufficient to satisfy his obligation to the seller.

The Service's ability to sustain such a position in litigation would be dependent on the facts of a specific case. In most cases, the parties attempts to protect themselves result in the transactions being pretty well documented and such documentation is helpful to the Service.